

1
2
3
4 **UNITED STATES DISTRICT COURT**
5 **DISTRICT OF NEVADA**
6

7 ERIC MESI et al.,

8 Plaintiffs,

9 vs.

10 U.S. BANK NATIONAL ASSOCIATION et
11 al.,

12 Defendants.

3:15-cv-00555-R CJ-WGC

ORDER

13 In April 2006, Plaintiff Eric Mesi borrowed \$280,334 from Washington Mutual Bank,
14 F.A. The loan was secured by a deed of trust on a residential property at 1329 Winnie's Lane in
15 Fernley, Nevada ("the Property"), which security interest Mr. Mesi granted to Washington
16 Mutual with California Reconveyance Company as trustee. The deed of trust was duly recorded
17 at the Lyon County Recorder's Office on April 10, 2006. (Deed of Trust, ECF No. 23-5.)

18 In October 2006, Mr. Mesi granted his interest in the Property to Fred and Betty Mesi, as
19 evidenced by Lyon County Recorder Document No. 394266. In May 2009, California
20 Reconveyance Company recorded a notice of default and election to sell against the Property,
21 which stated that no payments had been made on the loan since January 2009. *See* Lyon County
22 Recorder Doc. No. 442349. In August 2009, a notice of trustee's sale was recorded. *See* Lyon
23 County Recorder Doc. No. 446836. The same month, however, Plaintiff commenced a quiet title
24

1 action, and filed a notice of lis pendens in the Property's chain of title, effectively delaying the
2 scheduled sale.

3 In October 2009, all beneficial interest in the deed of trust was transferred to Bank of
4 America, N.A. *See* Lyon County Recorder Doc. No. 449556. In October 2012, National Default
5 Servicing Corporation was substituted as trustee of the deed of trust. *See* Lyon County Recorder
6 Doc. No. 498158. Then in November 2013, U.S. District Judge James Mahan ordered the lis
7 pendens, Lyon County Recorder Doc No. 447286, expunged and fully discharged, and further
8 deemed the Property "fully exonerated from the referenced Notice of Lis Pendens."

9 Between January 2014 and November 2015, three notices of trustee's sale were recorded.
10 Plaintiffs filed the instant action in Nevada state court on February 4, 2014, seeking to prevent
11 the foreclosure sale and quiet title. On October 13, 2015, Plaintiffs filed an Amended Complaint
12 which asserted various violations of state as well as federal law. On November 13, 2015,
13 Defendant JP Morgan Chase Bank ("Chase") removed the case to this Court. In December 2015,
14 the Court denied two motions for a temporary restraining order, which were aimed at enjoining
15 the trustee's sale. (*See* Orders, ECF Nos. 27, 33.) In denying both motions, the Court held that
16 Plaintiffs had failed to show they had a reasonable probability of success on the merits of their
17 claims. Shortly thereafter, on January 15, 2016, the Property was sold at auction to Defendant
18 U.S. Bank, N.A., successor trustee to Bank of America. *See* Lyon County Recorder Doc. No.
19 546034.

20 On March 10, 2016, the Court granted the motions to dismiss of Chase and U.S. Bank.
21 (Order, ECF No. 53.) In dismissing the Amended Complaint, the Court observed that Plaintiffs'
22 claims were "difficult to decipher," and that they provided "scattered and vague facts," drawing
23 "few connections between the facts and the alleged violations of federal and state law." (*Id.* at 3.)
24 Nonetheless, the Court granted Plaintiffs leave to amend seven of their eight claims within thirty

1 days. Rather than amending, Plaintiffs filed, in quick succession, a motion for reconsideration
2 and a notice of appeal. Of course, because the dismissal order granted Plaintiffs leave to amend,
3 it was non-final and therefore non-appealable, and their appeal was summarily dismissed for lack
4 of jurisdiction. (Order, ECF No. 61.) Following issuance of the Ninth Circuit's mandate, the
5 Court ruled on Plaintiffs' motion to reconsider, which had been fully briefed in the meantime. In
6 denying the motion, the Court noted that it "gave Plaintiffs leave to amend their complaint to
7 improve the strength and clarity of their claims, but they chose not to do so." (Order 2, ECF No.
8 63.)

9 At this point, Plaintiffs could have tried to pursue the opportunity for amendment which
10 the Court had granted in its order of dismissal. Plaintiffs instead opted not to take any action in
11 their case for more than eleven months. On June 2, 2017, Chase moved for an order closing the
12 case based on the Court's prior dismissal of the Amended Complaint, Plaintiffs' failure to amend
13 within the time period prescribed by the Court, and Plaintiffs' broader failure to prosecute the
14 case for nearly a year. (Mot. Close Case, ECF No. 65.) Plaintiffs failed to respond to the motion.
15 Accordingly, on July 27, 2017, the Court closed the case and entered judgment in favor of
16 Defendants. (Order, ECF No. 66.)

17 Since their case was closed, Plaintiffs have filed numerous groundless motions. On
18 August 11, 2017, Plaintiffs moved to "dismiss the judgment and reopen the case." (ECF Nos. 69,
19 70.) The Court denied the motion, finding that Plaintiffs had failed to identify any proper basis
20 for disturbing the judgment, whether under Federal Rule of Civil Procedure 59 or 60. (*See* Order,
21 ECF No. 78.) In late 2017, Plaintiffs filed four additional motions, two of which invoked Federal
22 Rule of Appellate Procedure 35 and requested en banc review of the Court's orders, (ECF Nos.
23 80, 84), one of which requested that Defendants' responses to the motions under FRAP 35 be
24 stricken, (ECF No. 88), and one of which sought to remedy an alleged Fourteenth Amendment

1 violation by Defendants, (ECF No. 96). The Court reviewed Plaintiffs' various motions and
2 found them to be procedurally improper and legally frivolous. Moreover, the motions repeated
3 many of the same points raised in earlier filings, and did not articulate a cognizable basis for
4 amending, altering, or otherwise granting relief from the final judgment. (Order, ECF No. 99.)

5 Now before the Court are six additional filings. Within the first three motions, which are
6 identical, Plaintiffs seek: (1) an order striking from the record the Court's prior orders at ECF
7 No. 66 and 99; (2) an en banc rehearing under FRAP 35; and (3) sanctions, although it is not
8 clear against whom they should be imposed. (Mots., ECF Nos. 101, 102, 103.) Plaintiffs also
9 filed a petition for writ of mandamus under 28 U.S.C. § 1361, but failed to articulate against
10 whom or on what basis such writ should issue. (Pet. Writ Mandamus, ECF No. 104.) Lastly,
11 Plaintiffs filed two more identical motions, the first asking to strike Chase's response to the
12 motions at ECF Nos. 101, 102, and 103, and the second requesting sanctions against Chase's
13 attorney. (Mots., ECF Nos. 110, 111.) Again, Plaintiffs' motions are meritless and must be
14 denied. This case is close. There is no viable complaint currently on file. Plaintiffs' Amended
15 Complaint was dismissed with leave to amend. To this date, Plaintiffs have not so much as
16 attempted to file an amended pleading. Furthermore, the Court could not now accept an
17 amendment after such an extended period of neglect. With their complaint dismissed, their
18 improper appeal dismissed, and their motion to reconsider denied, Plaintiffs ignored the Court's
19 invitation to amend their pleading for a full year. Now, an additional year has passed, and
20 Plaintiffs have made no attempt to replead their claims in a manner sufficient to survive
21 dismissal.

22 Because this case is closed, the Court lacks authority to consider Plaintiffs' substantive
23 arguments, unless Plaintiffs can show that they are entitled to relief from the judgment. As stated
24 in prior orders, the Plaintiffs have not raised any cognizable basis for disturbing the judgment.

1 There is no newly discovered evidence, the Court did not commit clear error, and there has been
2 no intervening change in controlling law. *See Sch. Dist. No. 1J, Multnomah Cnty., Or. v.*
3 *ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993).

4 Moreover, as noted by the Court at the outset of this case, Plaintiffs' claims largely
5 appear to lack merit. Lyon County records clearly show that Eric Mesi granted a deed of trust on
6 the Property as security for a \$280,334 loan from Washington Mutual. As of February 2009, the
7 loan was in default. Mr. Mesi does not claim that he was up-to-date on his obligation to repay the
8 loan at the time of foreclosure. Rather, he asserts that he never borrowed the money from
9 Washington Mutual, and never signed the deed of trust. Mr. Mesi refers the Court to documents
10 from Western Title Company related to the close of escrow, and asserts the documents show that
11 he "paid cash for the home" and that "there was no deed of trust or mortgage." (ECF No. 101 at
12 11–16.) In reality, these documents show no such thing, and do nothing to undermine the validity
13 of the deed of trust Mr. Mesi granted to Washington Mutual. Mr. Mesi also alleges that the deed
14 of trust was fabricated, and that his signature was "cropped onto the documents as [he] NEVER
15 SIGNED and agreed to a mortgage loan as he paid cash for the property." (Mot. Writ Mandamus
16 2–3, ECF No. 104.) The Court finds this allegation implausible, especially since recorded
17 documents indicate the borrowers made payments on this allegedly fraudulent loan up until early
18 2009. *See* Notice of Default, Lyon County Recorder Doc. No. 442349. Moreover, Mr. Mesi
19 could have raised this allegation in an amended pleading, but opted never to file one. Therefore,
20 the claim is not properly before this Court at this time.

21 For more than a year now, Plaintiffs have filed numerous groundless and duplicative
22 motions. This has not only consumed the Court's resources, but has forced Defendants to expend
23 time and money in preparing and filing responses. Accordingly, Plaintiffs will no longer be
24 permitted to file further motions in this case, and Defendants are invited to file, as may be

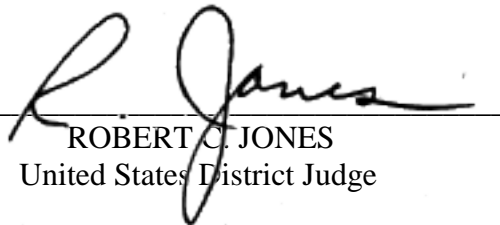
1 appropriate, any motions to recover attorneys' fees incurred as a result of Plaintiffs' groundless
2 motions.¹ If Plaintiffs wish to seek relief from this Court's orders, the proper forum in which to
3 do so in the United States Court of Appeals for the Ninth Circuit.

4 **CONCLUSION**

5 IT IS HEREBY ORDERED that the motions (ECF Nos. 101, 102, 103, 104, 110, 111)
6 are DENIED.

7 The Clerk of Court is hereby instructed, consistent with the foregoing, not to accept
8 further filings from Plaintiffs in the above-captioned case.

9 IT IS SO ORDERED. Dated this 28th day of August, 2018.

10
11
12 
13 ROBERT C. JONES
14 United States District Judge
15
16
17
18
19
20
21
22
23

24

1 Of course, the filing restriction will not prevent Plaintiffs from responding to any future motions brought by Defendants.